

Application of Tax Rules

Under generally applicable Code provisions, the seller of a broadcast business, or any other business, recognizes gain to the extent the sale price (and any other consideration received) exceeds the seller's basis in the property. Under Code section 1071, a seller receiving a tax certificate from the FCC can defer recognizing gain on the sale indefinitely by making either one or a combination of two elections on its tax return for the year of the sale.

The seller may elect to treat the sale or exchange as an "involuntary conversion" under Code Section 1033. If this election is made, the taxpayer will generally avoid recognizing gain on the sale to the extent that it reinvests the sale proceeds in qualifying replacement property within two years from the end of the tax year in which the sale occurs. If the taxpayer sells assets rather than stock, it may be required to recapture depreciation under certain circumstances.

Qualifying replacement property, within the meaning of this section of the Code, includes the following:

(1) Stock of corporations operating "radio broadcasting stations" (a term that the Internal Revenue Service ("IRS") interprets as including television stations and cable television stations). The seller may purchase any number of shares of a broadcast corporation, including a publicly-traded company (and may invest in more than one broadcast company).

(2) Assets "similar or related in service or use" to the property sold.

Under the "involuntary conversion" election and the general involuntary conversion rules, the taxpayer's basis in the acquired replacement property will generally be the "carryover" basis of the property that was sold, rather than a fair market value basis reflecting the full reinvested proceeds. If the replacement property is stock of a corporation conducting a qualifying business,

the carryover basis would apply to the stock but generally would not change the basis of assets inside the corporation. Depending on the basis and remaining depreciable lives of the assets inside the corporation, this might result in significant deferral of any tax detriment resulting from the carryover basis, as long as the stock is not sold.

The IRS has issued private letter rulings holding that the purchase of stock or assets from a related party can qualify as a replacement purchase. Thus, it appears that in certain circumstances related taxpayers may obtain significant tax deferral without any additional cash outlay to acquire new properties after a qualifying FCC tax certificate sale. The involuntary conversion election could provide greater flexibility as to the allocation of reduced basis than the alternative election to reduce basis of depreciable property.

If the seller chooses not to purchase "replacement property" or would otherwise recognize gain (because it reinvested only a portion of its cash proceeds in qualifying replacement property), Code section 1071 allows the seller to elect not to recognize the gain to the extent it is applied to reduce the basis of depreciable property (within the meaning of Code section 167) that is either held by the seller immediately after the sale or acquired by the seller in the taxable year of the sale. Eligible property includes most tangible property (not just broadcast property), but does not usually include items such as inventories, stock in trade, and securities. Eligible property also includes goodwill and other intangible property that is depreciable under Code section 197 (which generally applies to intangible property acquired after August 10, 1993). A seller that elects to reduce its basis in depreciable property must reduce its basis in all of its depreciable property by reference to a regulatory formula--it cannot allocate the reduction disproportionately unless authorized by the IRS to do so.

Issues Raised by Code Section 1071

Based upon our review of Code 1071, and the manner in which it is administered by the FCC and the Internal Revenue Service, there are a number of tax policy considerations which we have identified and which the Committee may wish to take into consideration in reviewing what, if any, changes should be made to this provision. These considerations are as follows:

- First, the current law provision extends broad discretionary authority to an agency of the Federal government to administer a tax provision which is substantially open-ended. The recent expansion of the program to personal communication service licenses is evidence of its open-ended nature. We have been unable to identify any other aspects of the Internal Revenue Code, other than the provision which grants the State Department the authority to designate combat zones, which extends this kind of discretionary authority.
- Second, the manner in which the FCC administers this provision does not take into account the tax cost associated with the granting of an FCC tax certificate. Indeed, we have been advised that the FCC does not request this information as part of its tax certificate application program. As a result, there is no effort made to balance the cost to the Federal government with the benefit which is obtained from the granting of an FCC tax certificate.
- Third, there is no cap on the amount of tax benefit which accrues on a per transaction basis. This raises concerns, particularly when considering a transaction like the proposed Viacom transaction, which appears to have the ability to confer a substantial tax benefit in the range of \$440 million to \$640 million if it were to receive an FCC tax certificate. In addition, there is no requirement that the tax benefit accrue, in whole or in part, to the minority-owned or controlled purchaser. In many transactions it is possible that the minority-owned or

controlled purchaser is paying full fair market value for the property acquired even though the seller may be receiving a substantial tax benefit over and above the sale price for the broadcast property.

- Fourth it appears that as a result of IRS interpretation, the sellers of property qualifying for the FCC tax certificate can utilize various planning techniques that enable them to obtain a tax deferral indefinitely without reducing the basis of existing properties or being forced to acquire new properties with a reduced basis.
- Fifth, the manner in which the FCC has administered Code section 1071 appears to allow transitory ownership by minority parties and ownership of very small actual interests in properties qualifying for the FCC tax certificate.
- Sixth, programs like this one have typically been administered through the appropriation of direct spending amounts so that Congress can have continuing oversight over the amount of money which is being spent for the particular program. As a result, Congress may wish to substitute a direct appropriation program for Code section 1071.

These are all issues which the Committee needs to consider assessing the merits of current law and any changes that may be necessary. I will be happy to take questions.

EXHIBIT 3

EMBARGOED UNTIL 10:00 A.M.
January 27, 1995

STATEMENT OF
GLEN A. KOHL
TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
BEFORE THE
WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

Chairwoman Johnson and Members of the Subcommittee:

I am pleased to have this opportunity to present testimony today on behalf of the Department of the Treasury concerning section 1071 of the Internal Revenue Code. In convening this hearing, the Subcommittee indicated its desire to examine four issues: (i) whether the Federal Communication Commission's (FCC) 1978 policy of promoting minority ownership is consistent with the underlying intent of Section 1071; (ii) whether the FCC's administration of section 1071 constitutes an impermissible exercise of legislative authority; (iii) whether the tax incentive provided in section 1071 fosters minority ownership of broadcast facilities; and (iv) whether the FCC policy is a necessary or appropriate means of achieving this goal.

Because the issues identified by the Subcommittee relate primarily to the responsibilities assigned by Congress to the FCC, my testimony is intended simply to prove an overview of Section 1071 -- including recent Treasury testimony on Section 1071 -- and an explanation of the Internal Revenue Service's (IRS) role in its administration.

In September, 1993, the Ways and Means Subcommittee on Select Revenue Measures conducted a hearing on miscellaneous revenue measures, including an unspecified proposal "that would modify section 1071 by adding anti-abuse rules to ensure that tax incentives are available only for sales that actually foster minority ownership of broadcast stations." The Assistant Secretary (Tax Policy), Leslie B. Samuels, testified that we would not oppose a carefully targeted amendment to section 1071 that would prevent certain sellers (e.g., those who actively participate in sham transactions) from taking advantage of Section 1071, provided the amendment did not deny such preferential tax treatment to "innocent" sellers -- that is, taxpayers who participate in a sale that results in bona fide minority ownership. Our position in this regard has not changed. Accordingly, we would be willing to work with the Committee or the FCC in attempting to craft anti-abuse provisions that we could support and which would not reduce the effectiveness of the program. In addition, although the Administration has no position on this matter, we would be pleased to consider with the Committee and the FCC whether a cap or other limitations on Section 1071 benefits would be necessary and appropriate to target more precisely this tax provision to its desired

objective. We will also coordinate with other offices within the Administration, including the Commerce Department's National Telecommunications and Information Administration.

Overview of Section 1071

Section 1071 provides certain tax benefits (described below) to the seller of property if the sale or exchange is certified by the FCC to be "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations." Since 1978, the FCC's policy has been to certify transactions as meeting this requirement where a sale of broadcast facilities is made to a minority individual or a minority-controlled entity.¹

In general, Section 1071 allows a taxpayer to postpone the recognition of gain realized upon the disposition of certain broadcasting property for which the taxpayer has obtained the necessary certificate from the FCC (Section 1071 Certificate). The tax-free treatment accorded by Section 1071 allows the taxpayer to defer the tax on the gain realized in the transaction (although in certain circumstances such deferral can be effectively permanent). In this regard, the benefits of Section 1071 are generally similar to the benefits accorded taxpayers who reinvest insurance proceeds following an involuntary conversion of property under Section 1033 (e.g., as the result of fire or flood), or, to a lesser extent, taxpayers who participate in tax-free exchanges of "like-kind" property under Section 1031.

To obtain the benefits of Section 1071, the taxpayer must file an election with its return that includes the Section 1071 Certificate. This election requires the taxpayer to choose one of three alternative methods for taking advantage of the Section 1071 deferral. The first approach is to apply a modified form of the involuntary conversion rules. Generally, gain is not recognized to the extent that replacement property which is similar or related in service or use to the property sold is acquired before the end of the second full taxable year after the year in which the disposition occurs. The second approach is to reduce the depreciable bases of other assets held by the taxpayer at the time of the disposition and acquired before the end of the taxable year in which the disposition occurs. Unless the taxpayer requests an alternative allocation, the bases of all depreciable assets are reduced on a pro rata basis. The third approach is to elect a combination of the first two approaches (i.e., defer a portion of the gain through the acquisition of replacement property and another portion through reducing the bases of other depreciable property).

¹ We understand that the FCC defines (1) a minority-controlled corporation as a corporation in which more than 50 percent of the voting stock is held by minorities and (2) a minority-controlled limited partnership as a partnership in which (a) the general partner is a minority or minority-controlled and (b) minorities own at least a 20 percent interest.

We also understand that the FCC generally requires those who acquire broadcast properties under Section 1071 to retain those properties for at least one year.

The Limited Role of the IRS

Under section 1071, Congress has delegated authority to the FCC to issue Section 1071 Certificates. Tax benefits under Section 1071 are available only if the taxpayer obtains a Section 1071 Certificate from the FCC. The IRS generally accepts as valid any Section 1071 Certificate that is issued. The IRS neither participates in, nor exercises oversight over, the FCC's determination, and conducts no independent inquiry into whether, for example, minorities meaningfully participate in a purchasing group. Consequently, the IRS's role is limited to administering and interpreting the technical requirements of Section 1071 described above (including the rules of Section 1033 which Section 1031 incorporates by cross-reference).

Potential For Abuse

I would also like to discuss the potential for abusing Section 1071, but first I should reiterate that the Department of the Treasury does not participate in the FCC certification process. My testimony therefore should not be construed as commenting on the propriety of issuing Section 1071 Certificates in any particular circumstances or for any particular transactions, including recent transactions that have been covered in the press.

Abusive transactions may arise in any regulatory context. As you are certainly aware, Treasury, the IRS, and the courts expend considerable energy and resources dealing with abusive transactions. Fortunately, the tax law, like other statutory regimes, is interpreted in a manner consistent with its spirit and purpose. Reflecting this rule of interpretation, tax doctrines have evolved to combat such abuses. These doctrines include a prohibition against "sham" transactions, a rule that a transaction must be taxed in accordance with its substance and not merely its form (the "substance over form" doctrine), and a rule that certain related transactions are to be aggregated and treated as one overall transaction (the "step transaction doctrine"). In addition, various statutory provisions and IRS regulations have been adopted to address abuses because the common law doctrines have not been fully successful in combating abusive transactions.

Certification of transactions under Section 1071, however, is conducted by the FCC, and not the IRS. I assume that, like any regulatory agency, the FCC deals with attempts to abuse its rules, including the rules governing the issuance of Section 1071 Certificates. In the absence of adequate safeguards against abuse, it is possible that an aggressive participant could devise a scheme that might enable parties to obtain a Section 1071 Certificate even in situations that do not meaningfully enhance the ownership of broadcasting properties by minorities. If such a scheme were to succeed, granting the Section 1071 Certificate would unfairly reward the participants of a tax avoidance scheme, possibly at the expense of a bona fide minority ownership group and/or a non-minority ownership group that was unwilling to engage in abusive tax planning. Because the Treasury neither participates in nor reviews the certification process, however, I am not in a position to comment on whether there, in fact,

exist any transactions where the grant of a Section 1071 Certificate is not consistent with the intent or purpose of Section 1071 or any regulations promulgated thereunder.

The issuance of Section 1071 Certificates is designed to further an FCC objective. Nevertheless, as I previously stated, we would be pleased to consult with the FCC or this Committee in developing further safeguards against abuse of the certification process (through anti-abuse provisions or specific measures such as a more stringent holding period requirement). We would also be pleased to work together towards other means of tailoring the Section 1071 benefits to more efficiently promote its objectives.

This concludes my remarks. Thank you once again for affording me the opportunity to testify. I am now available to answer any questions that the Committee may have.

EXHIBIT 4

This transcript has not yet been checked against videotape and cannot, for that reason, be guaranteed as to accuracy of speakers and spelling. (JES)

DAY ONE Transcript #182

March 23, 1995

ANNOUNCER: This is an ABC News magazine. Day One.

FORREST SAWYER, ABC News: Tonight: By now they're as famous as their clients—Cochran, Shapiro, Bailey. But at thousands of dollars a day, is O.J. Simpson getting his money's worth?

VINCENT BUGLIOSI, former Los Angeles District Attorney: They've been making errors that the L.A. Public Defenders office would not make.

FORREST SAWYER: John Hockenberry sizes up the "dream team." Is this the best defense money can buy?

DIANE SAWYER, ABC News: And back in business with the return of Michael Jordan. He's not just a player, he's a corporation.

BRIAN MURPHY, Sports Marketing Expert: Posters, wristbands, autographed photos— you name it, there's a— there'll be dozens and dozens of people selling Michael Jordan products.

JERRY DELLA FEMINA, Advertising Executive: As advertising goes, he's a slam dunk.

DIANE SAWYER: Basketball fans aren't the only ones celebrating.

FORREST SAWYER: It sure sounded like a good idea: a huge tax break to help minorities invest in radio and television. But:

BRIAN ROSS, ABC News: They say that you're the Hispanic front man who came in—

BLAKE BYRNE: [sp?] That's a lot of *[deleted]*.

FORREST SAWYER: Were some of these minorities just a front for rich white investors?

BRIAN ROSS: Can you really justify it to taxpayers that it's worth it?

BLAKE BYRNE: I can.

BRIAN ROSS: You can.

BLAKE BYRNE: I'm proud. I'm proud of—

BRIAN ROSS: You got—

BLAKE BYRNE: —what we've done.

BRIAN ROSS: You got rich.

FORREST SAWYER: Brian Ross investigates millionaires making millions more while you foot the bill.

DIANE SAWYER: Imagine taking your child to the hospital and having him taken away.

CHERYL BRYANT-BRUCE: [sp?] This is craziness because I'm his mother.

DIANE SAWYER: The doctors called it a case of child abuse.

JOHN MCKENZIE, ABC News: You said it wasn't just child abuse. You said this was severe child abuse.

Dr. NICK OQUIST: [sp?] That's correct.

DIANE SAWYER: But the baby's parents called it a terrible mistake.

CHERYL BRYANT-BRUCE: I'll fight this until I die.

DIANE SAWYER: What did happen to baby Gregor [sp?]?

FORREST SAWYER: And what do Barbara Walters and Sam Donaldson have to say about Kato, America's most famous house guest? Plenty.

ANNOUNCER: Day One from T.V.-1 in New York with Diane Sawyer and Forrest Sawyer.





Minority Broadcasters

ANNOUNCER: Day One continues from T.V.-1 in New York with Diane Sawyer and Forrest Sawyer.

FORREST SAWYER: Back in 1978, the government took a look at the media business and realized that of the 8,500 radio and television stations around the country, only 40 were owned by minorities. So the government decided to do something about it. It gave a generous tax break to anybody who sold a station to a minority and that, in turn, was supposed to bring a better price for the buyer.

But there has been a hitch, and a big one. Congressional sources say that tax break has cost you about a billion dollars. And the people who gained the most from it? Not who you'd think. Brian Ross has the story.

BRIAN ROSS, ABC News: What do you say when people say... "Clarence McKee was just very expensive... window dressing"?

CLARENCE McKEE: I don't care what they say. I know what I did and I know the accomplishments.

BRIAN ROSS: [voice-over] What 52-year-old lawyer Clarence McKee did was to go into the television business in a big way. When channel 13 in Tampa was sold to a new owner in 1987 for \$365 million, news anchors and camera people told us they thought the new owner was Gillette Broadcasting [sp?], owned by multimillionaire George Gillette, who owned a number of other T.V. stations.

But in Washington, in the record rooms of the Federal Communications Commission, the FCC, it's not George Gillette, but Clarence McKee who is listed as the president, CEO and 51 percent owner of channel 13. That's because, under a little-known law designed to help minorities buy radio and T.V. stations, Clarence McKee's name and race on the FCC documents meant a \$116 million tax break for the white man who sold the station, passed on in the form of a much lower price to the buyer.

CLARENCE McKEE: Am I cheating the taxpayer because I deferred \$100 million in taxes? Some members of the Congress think so. I don't think so.

BRIAN ROSS: They say you are a front man.

CLARENCE McKEE: Well. I was not a front man. A front man does not expend all the money that I have spent.

BRIAN ROSS: How much did you put in?

CLARENCE McKEE: Oh, I put in—

BRIAN ROSS: A thousand dollars?

CLARENCE McKEE: I put in some money. I don't have to tell you what I put in.

BRIAN ROSS: More than \$1,000?

CLARENCE McKEE: I'm not even going to say. It's—that is not the issue. The point is—

BRIAN ROSS: Can you tell me?

CLARENCE McKEE: —a lifetime of sweat equity. The company was capitalized by Mr.—

BRIAN ROSS: No, but really, can you tell—

CLARENCE McKEE: I'll tell you. I tell you— \$210.

BRIAN ROSS: You put in \$210 for a station that cost \$365 million?

CLARENCE McKEE: But it was all leveraged and borrowed.

BRIAN ROSS: And you think you really had control?

CLARENCE McKEE: Well, you know what? The investors had control.

MARK FOWLER: [sp?] Really, what it amounted to was making a lot of people very wealthy using the tax code.

BRIAN ROSS: [voice-over] Mark Fowler is a former chairman of the FCC and he says the deal in Tampa with Clarence McKee is but one example of how a program that started with a noble goal has gone out of control at a huge cost to taxpayers.

MARK FOWLER: Basically, the FCC had the biggest federal welfare program in Washington and we didn't know it.

BRIAN ROSS: [voice-over] The idea was to get a greater range of programs on the air by increasing the small number of minority-owned radio and T.V. stations in the country. Under the law, anyone who sells a T.V. or radio station to a minority can delay or avoid paying often huge capital gains taxes. And since 1978 more than 200 radio and 35 T.V. stations have been sold to minorities under the program.

But it's not been cheap for taxpayers. Even in the straightforward deals, some of the biggest media companies in the country have received tens of millions of dollars in tax breaks, including *The New York Times* and the owner of this network, Capital Cities ABC.

MARK FOWLER: Concept is a great and noble goal. The question is, was this a good policy? Did it really work? And what was the cost?

BRIAN ROSS: Is there any limitation on how much money can be given away in these tax breaks?

MARK FOWLER: No, the sky's the limit.

BRIAN ROSS: [voice-over] Fowler says it soon became apparent that not only was the program costing big money, but that some sharp Wall Street lawyers and bankers had figured out a gaping tax loophole.

MARK FOWLER: People would put together the most Rube Goldberg-ish of contraptions to qualify, and they

would qualify.

BRIAN ROSS: When you were chairman, did you try to do anything to stop this, to take a hard look at this?

MARK FOWLER: I— I started to speak out on this and I was branded, essentially, a racist.

CLARENCE McKEE: The fact that there's only 2.9 percent of the media in this country, radio and T.V., owned by Hispanics or blacks— I think that's not good and it's not good for white people, as well. And the only time that people get worried about tax deferrals is when it comes into an issue involving minorities, you see.

BRIAN ROSS: [voice-over] But what has led to much of the criticism of the channel 13 deal is that Clarence McKee appears to have been a kind of minority owner for hire or for rent.

[interviewing] Well, look at this.

CLARENCE McKEE: You know—

BRIAN ROSS: Here's— here's one of the contracts.

[voice-over] Under the terms of the deal, Gillette Broadcasting had the irrevocable right to buy McKee out for a million dollars, which is just what happened in 1992.

[interviewing] When they want you to go, you're gone.

CLARENCE McKEE: Oh, it's part of the deal.

MARK FOWLER: This is not a real— real-world economic transaction.

BRIAN ROSS: Irrevocable option to purchase all the shares on—

MARK FOWLER: What this paper says here, Brian—

BRIAN ROSS: What does that mean, in layman's language?

MARK FOWLER: V-A-P-O-R.

BRIAN ROSS: Vapor?

MARK FOWLER: Right. Gone. Now you see it, now you don't.

BRIAN ROSS: [voice-over] McKee says, in his five years as the controlling owner of channel 13, he brought new sensitivity to the newsroom and learned a lot about the television business, what McKee says the FCC rules intended. McKee ought to know. As a young lawyer at the FCC in the 1970s, he helped write the rules that made his deal possible.

DON CORNWELL, CEO, Granite Broadcasting: Outrageous.

BRIAN ROSS: Outrageous?

DON CORNWELL: Outrageous. I'll use that word.

BRIAN ROSS: [voice-over] The president of Granite Broadcasting, Don Cornwell, is a big supporter of the minority tax program. But he says deals like the one with Clarence McKee in Tampa have little to do with helping minorities.

DON CORNWELL: They are an outrage to me, as a minority entrepreneur, and they're an outrage to me, as a taxpayer.

BRIAN ROSS: [voice-over] Cornwell says his company wouldn't have been able to raise the money to buy seven T.V. stations from Peoria to San Jose without the minority tax program. And, Cornwell says, he and others

have been able to do it without becoming anyone's front man.

DON CORNWELL: No one, not even my partner, has a right to buy my stake. If a transaction allows the non-minority partner to buy out the minority partner at some point—

BRIAN ROSS: What's wrong with that?

DON CORNWELL: With the buy-out? It's just simply a way of putting someone in your shoes.

BRIAN ROSS: *[voice-over]* That's been the criticism of another big T.V. station deal, this one involving an \$84 million tax break for the huge Times-Mirror Company. When veteran T.V. executive Blake Byrne *[sp?]* and his partner formed their own company to buy the Times-Mirror stations, Byrne says, they were told to get a minority on board so that the Times-Mirror company could get the tax breaks.

BLAKE BYRNE: They said, "You need a minority" and we said, "Well, one of our— one of our key executives is Hispanic, all right?" They— he fits into that slot.

BRIAN ROSS: *[voice-over]* That was Ibrahim Morales *[sp?]*, an experienced T.V. sales executive, who was actually second choice. The first choice, according to Byrne and these papers filed with the FCC, had been Henry Cisneros, the now-embattled secretary of Housing.

BLAKE BYRNE: Well, Henry couldn't be a partner because he became part of the administration. When Ibra agreed to accept that position, we were willing to accept that as part of the game.

BRIAN ROSS: You hired him as the chairman of the board?

BLAKE BYRNE: Absolutely.

BRIAN ROSS: You hired your own boss, essentially.

BLAKE BYRNE: That's right. Absolutely.

Say hi to Brian Ross.

BRIAN ROSS: *[voice-over]* Morales didn't really want to talk to us, but Blake Byrne took us into Morales's closet-like office to say hello to the boss.

[interviewing] Who's the real boss?

BLAKE BYRNE: You're the boss. He's the boss.

BRIAN ROSS: They say that you're really the boss. Mr. Morales, no offense met, they say you're Hispanic front man. You came in—

BLAKE BYRNE: That's a lot of *[deleted]*

BRIAN ROSS: *[voice-over]* But if Morales is the boss, the controlling owner and chairman, it's not reflected in how much of his own money he put into the deal, four one hundredths of 1 percent.

[interviewing] Business people who look at the deal say your deal stinks.

BLAKE BYRNE: Well, then, I would like them— no one has ever said that to Ibra or to me.

DON CORNWELL: I think that this was— was an outrage and— and I was quite disappointed that the FCC allowed the transaction to go through.

BRIAN ROSS: *[voice-over]* But it was a deal that made some people very rich very fast. Later this month, the stations will be sold to a non-minority company for a

\$400 million profit, just meeting the FCC requirement that the stations be owned by the minority for a year and a day.

[interviewing] Is it a violation of the—

BLAKE BYRNE: No, it's not. It's—

BRIAN ROSS: —spirit of the law?

BLAKE BYRNE: —not a violation.

BRIAN ROSS: Of the spirit of the law?

BLAKE BYRNE: I don't know. It— *[crosstalk]* It could be considered that.

BRIAN ROSS: *[voice over]* And as for the real goal of the \$84 million in tax breaks — more T.V. programs for minorities—

[interviewing] Any special programs for minorities?

BLAKE BYRNE: Any special programs? None— no— no new ones. Little changes, perhaps, in—

BRIAN ROSS: Not a single new one?

BLAKE BYRNE: In terms of new programs? No.

BRIAN ROSS: *[voice-over]* But Byrne says that, by his count, he and Morales did increase the number of minorities in decision-making jobs by a huge number.

BLAKE BYRNE: Four hundred percent, right?

BRIAN ROSS: Four hundred percent?

BLAKE BYRNE: Right.

BRIAN ROSS: Well, 400 percent sounds impressive. When you get right down to it, we're talking about four people.

BLAKE BYRNE: That's right.

MARK FOWLER: None of this makes sense, Brian.

BRIAN ROSS: The whole concept.

MARK FOWLER: The whole concept is— is intellectually dishonest.

BRIAN ROSS: Did the FCC, in your view, do a good job of policing this? You're the former chairman.

MARK FOWLER: I think that it's fair to say that we— we thought not one whit about the impact on the federal treasury.

BRIAN ROSS: Not one whit?

MARK FOWLER: No. We were, basically, the FCC, the "federal check-writing commission."

BRIAN ROSS: *[voice-over]* In fact, once Fowler, as chairman of the FCC, started raising questions, Congress, in 1987, passed a law to prohibit the FCC from doing anything to change the minority tax break program. But now a new Congress is taking a different view.

DON CORNWELL: I know a number of young entrepreneurs who want to get into this business and who view this program as a way for them to do it. And because of these abusive transactions, Congress is looking very hard at shutting it down.

BRIAN ROSS: *[voice-over]* The House has already voted to shut it down and the Senate is expected to vote on the program soon. And it is the most recent and biggest deal yet, involving this man, Frank Washington, that may be the undoing of the whole thing. Washington, also a former FCC lawyer who is now in the cable T.V. business, represents what could be a \$600 million tax break for the giant Viacom company, which is sell-

ing its cable T.V. systems.

FRANK WASHINGTON: I continue to own every cable system I ever purchased.

BRIAN ROSS: *[voice-over]* But for many members of Congress, Frank Washington's deal with Viacom is just another example of what's wrong with the law.

[interviewing] How many deals have you been involved in— *[crosstalk]*

FRANK WASHINGTON: Several. A few.

BRIAN ROSS: How many?

FRANK WASHINGTON: A few.

BRIAN ROSS: *[voice-over]* It turns out the Viacom deal would be the fifth time since 1990 that Washington has been the minority person whose involvement has meant tens of millions of dollars in tax breaks for some huge media companies.

[interviewing] Why do you think it should cost American taxpayers \$400 to \$600 million so that you can be in the broadcasting business? Is it really worth it?

FRANK WASHINGTON: There is no tax loss.

BRIAN ROSS: Four hundred to six hundred—

FRANK WASHINGTON: Thank you. Good-bye.

BRIAN ROSS: —million dollars? Is it really worth it, sir?

MARK FOWLER: No question, it has a benefit, but at what cost? And again, there were no bad players in this drama, just bad policy. Any time you have a perverse incentive, people act perverse.

BRIAN ROSS: And was this a perverse incentive?

MARK FOWLER: Yes.

BRIAN ROSS: What made it so?

MARK FOWLER: Because the money was too big for somebody not to take advantage of it, to devise 110 different ways to try to beat the system. And they did.

[Commercial break]

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CERTIFICATE OF SERVICE

I, David Honig, this 3rd day of April, 1995, hereby certify that I have caused to be delivered to the following persons by U.S. First Class Mail, postage prepaid, the foregoing "Request for Official Notice":

Hon. Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
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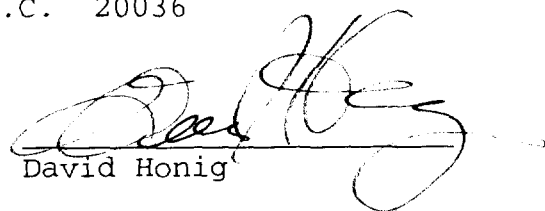
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